drug, and a remote vendee is allowed to recover for resulting damage. See *Thomas* v. *Winchester*, 6 N. Y. 397; 15 HARV. L. REV. 666. But there too the negligent act is positive.

The law is less ready to impose a duty to act than a duty not to act. A man is under no legal duty to save a stranger whom he sees drowning; but he is under a legal duty not to push him into the water. The defendant undoubtedly would owe a duty to all the individual members of the public not to take the patient through the streets or to their houses. If it is held that there exists the same broad duty actively to prevent his spreading the infection, the result is apparently an extension of the rules of tort liability to a new class of cases. It means that as the law grows it will recognize as a legal duty what formerly it has regarded as a moral duty only. If the case is to be supported on principles heretofore recognized, it must be on the ground that the defendant did certain acts prior to the time of the alleged negligence which imposed upon him the duty of care. When he voluntarily assumed control of this patient — this irresponsible force — he could foresee damage to some remote third person, or class of persons, as a natural and probable consequence of a failure by himself to use ordinary care in controlling it. Thereupon it may be said that a duty arose toward such persons to exercise this care. *Cf.* POLLOCK, TORTS, 2nd ed. 373–4.

DETERMINATION OF STATUS OF FOREIGN TERRITORY. — Probably no court in this country would hold that the decision of the executive department of the government on a political question was not binding on the courts; yet what is a political question has never been strictly defined. A recent case before the United States Circuit Court raised a very nice question of this kind. An importer who had brought crude tartar from Algeria into this country claimed the right to pay duty on it at 5 per cent *ad valorem* under the terms of the reciprocity treaty between the United States and the Republic of France. The court found for the importer, holding that the question whether Algeria was a part of France was a judicial not a political one; and that in the determination of it the court would receive testimony of the French ambassador and other French officials concerning the law on the point. *Tartar Chemical Co.* v. *United States*, 116 Fed. Rep. 726 (Circ. Ct., S. D., N. Y.).

If there were a dispute between the United States and France concerning the possession of Algeria, clearly it would be a political question to be decided by the executive branch of the government, and the court would be bound to respect its decision. *Foster* v. *Neilson*, 2 Pet. (U. S. Sup. Ct.) 253. This the court would do even though on general principles of international law, apart from special decision by the political department, it would itself reach a different result. *In re Cooper*, 143 U. S. 472. Again, if there were disputes between France and another state concerning the ownership of Algeria, the court would be bound by the decision of the executive. *The Santissima Trinidad*, 7 Wheat. (U. S. Sup. Ct.) 337. If it were a question of the existence of Algeria as an independent power, the court would follow the ruling of the political department. *Mighell* v. *Sultan of Johore*, [1894] 1 Q. B. 149. Furthermore, if it were a question which of two governments was the lawful government of Algeria, it would clearly be a political question, and the court would take notice of the ruling of the executive. *Luther* v. *Borden*, 7 How. (U. S. Sup. Ct.) 1. The reason for the rule that the

judiciary is bound by the decision of the executive department in political questions is clear. Contrary decisions by executive and judicial departments on questions involving the sovereignty or jurisdiction of states, or the status of government, would be a source of embarrassment, and might involve the state in international complications. One department must, then, decide such questions, and the executive department which has charge of the diplomatic relations of the state is obviously the proper one to do so.

The reason for the rule clearly shows it inapplicable to the principal case. No question of sovereignty or jurisdiction was raised. The United States did not dispute the jurisdiction of France in Algeria, nor did any other nation dispute it. The sole question at issue was whether, under the Treaty, goods from Algeria could be regarded as coming from France. It is apparent, then, that no question was raised the decision of which could in any way involve this country in international complications. The court had merely to interpret the meaning of the word "France" as used in the Treaty, and this under the circumstances was clearly a judicial question.

THE NATURE OF BUSINESS GOODWILL. — A recent Indiana case raises the question whether the goodwill of a business is "property" within the terms of a statute which taxed "all property within the jurisdiction of the state not specially exempt," and decides it in the negative. *Hart* v. *Smith*, 64 N. E. Rep. 661. The court admitted that there is "an almost universal recognition at the present day of goodwill as in the nature of property." They regarded it as clear, however, "that goodwill is not in and of itself property, but that it is an incident that may be attached or in many cases connected with it." Since the decision is based on a misconception of an earlier case, it is fortunately of little authoritative value. The court in consequence of its error treated the goodwill of the business as attaching to the stock in trade, when the judge in the earlier case expressly said that it never could be so regarded. See *Rawson* v. *Pratt*, 91 Ind. 9, 16.

Lord Eldon's classic definition stated that goodwill was nothing more than the probability that old customers would resort to the old place. See *Cruttwell* v. *Lye*, 17 Ves. Jr. 334. And Leach, M. R., described it as "the advantage attaching to the possession of the house" in which the business had been carried on. *Chissum* v. *Dewes*, 5 Russ. 29. In accordance with this view goodwill was treated as "local," attaching to the possession of realty, and hence it was natural to regard it in a way as an incident to property. A broader definition now prevails. Briefly stated, goodwill is conceived to be the advantage possessed by an establishment in consequence of public patronage received from constant or habitual customers on account of its local position, or reputation for skill, affluence, punctuality, etc. See STORY, PARTNERSHIP, § 99. The patronage dependent upon reputation is secured to a firm or business house by its trade names or trade marks. Thus the goodwill of a public house, instead of being incident to the premises alone, attaches to the name by which they are known. See *Woodward* v. *Lazar*, 21 Cal. 448. The goodwill of a newspaper is annexed to the title under which the paper is published. *Boon* v. *Moss*, 70 N. Y. 465. And manufacturers find their goodwill dependent upon their trade marks. See *Edwards* v. *Dennis*, 30 Ch. D. 454. Further, the general tendency of the law under the broader definition is to treat goodwill as itself property. It is regarded as proper subject matter for a sale or bequest. *Howard* v.